

REMARKS

In the instant application, new claims 11-20 have been added. Therefore, claims 1 and 3-20 are currently pending. Claim 5 has been amended to correct the typographical error as indicated in the Office Action. Support for the amendment set forth above can be found generally throughout the text.

REJECTIONS UNDER 35 U.S.C. 102

## I. JP 2003252705A

Claims 1, 5-10 stand rejected under 35 U.S.C. 102(b) as being anticipated by JP 2003252705A (hereinafter "the '705 reference"). The '705 reference discloses a wood preservative including, in combination, a quarternary-ammonium-salt compound, a copper-containing compound and a triazole compound. In contrast, the independent claims of the present invention (claims 1, 5, 7, and 10), as amended, feature an active compound mixture comprising ipconazole and at least one further fungicidally active compound. The independent claims do not feature a copper containing compound. Furthermore, the '705 reference does not teach the combination of a triazole with at least one further fungicidally active compound. The triazole of the '705 reference, although it may include ipconazole, does not include a further active compound. As such, the '705 reference does not teach all the features of instant independent claims. Therefore, the claims are patentable over the cited reference. Withdrawal of the rejection is respectfully requested.

## II. JP 2003095829

Claims 1 and 8 stand rejected under 35 U.S.C. § 102(a) as being anticipated by Japanese publication number 2003095829 (hereinafter "the '829 reference"). The '829 reference discloses antibacterial compositions for industrial products where the compositions include a first component being ipconazole and a second component being the sodium salt of 2-pyridine thiol-1-oxide and zinc salt or a pyridine system compound of a copper salt. *See the '829 reference, paragraph [006].* In contrast, claim 1, as amended, does not feature a pyridine. Furthermore, the '829 reference recites a

triazole but does not disclose at least one further fungicidally active compound as featured in claim 1. As such, the '829 reference does not teach every feature of instant claim 1. Withdrawal of the rejection is respectfully requested.

### III. EP 0677246

Claims 1, 3, 4, 8, and 9 have been rejected under 35 U.S.C. 102(b) as being anticipated by EP0677246 to Tateishi et al. (hereinafter "Tateishi"). Tateishi discloses a fungicidal composition including at least one fungicidal compound selected from benomyl, cypendazole, carbendazim, EBC, thiabendazole, fuberidazole, dimetbenzazol, thiophanate ethyl, with ipconazole. *See Tateishi, Abstract.* Further, Tateishi states that prochloraz may be included with the composition. *See Tateishi, page 4, line 37.* Instant claim 1, as amended, features ipconazole and at least one further fungicidally active compound where this compound does not feature prochloraz.

Tateishi does not teach ipconazole and at least one further fungicidally active compound including the compounds featured in claim 1. As such, Tateishi does not teach every feature of the instant claim. Withdrawal of the rejection is respectfully requested.

### IV. JP 05221812A

Claims 1 and 8 stand rejected as being anticipated by JP 05221812A (hereinafter "the '812 reference"). The '812 reference discloses a germicide for rice seeds where the germicide includes ipconazole and a carbonate and an additional copper compound. However, the '812 reference does not teach ipconazole and at least one fungicidal compound as set forth in claim 1, part (b), as amended. Claim 1 does not feature a copper compound and nowhere in the '812 reference does it teach the fungicidal compounds of claim 1. Therefore, the '812 reference does not teach every aspect of instant claim 1. Withdrawal of the rejection is respectfully requested.

#### Rejection under 35 U.S.C. §103(a)

Claims 1 and 3-10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Tateishi in view of Arahira et al. (EP0341954).

Tateishi clearly fails to teach or suggest “[i]midazoles selected from the group consisting of clotrimazole, climbazole, imazalil, ketoconazole, and their metal salts and acid adducts.” (Formula 1). Moreover, Arahira fails to overcome this deficiency; therefore, the withdrawal of these obviousness rejections is immediately proper because the combination of references fails to teach all of the limitations of the presently claimed invention.

Furthermore, Tateishi discusses fungicidal compositions for use on living materials. Arahira, in turn, discusses use of biocidal compositions for industrial materials. As discussed in previously filed responses, industrial materials and living materials are simply different from one another even though they are perhaps formed of similar material and, therefore, the skilled artisan generally accepts that a composition suitable for the protection of living materials, e.g. plants, normally is not used for combating microorganisms that destroy technical materials, e.g. lumber, and vice versa. This understanding is partially based on the fact the microorganisms that attack living plants are normally different from those that attack technical nonliving materials such as wood and wooden materials. Thus a microbicide that is suitable for the protection of plants is created to meet and satisfy different purposes and requirements as compared with a microbicide that is suitable for the protection of technical materials.

In light of the differences between living and nonliving materials, along with the differences in the compositions those skilled in the art would normally consider in view of the material to be protected, Applicants respectfully submit one skilled in the art would neither be motivated to combine the references nor would there be an expectation of success that the invention produced by the combination could be used as is presently claimed. In other words, the skilled artisan who wanted to improve the efficacy of the known ipconazole for the protection of technical materials would not have combined ipconazole with a compound that was known to protect plants. Accordingly, one skilled in the art would not be motivated to combine the teachings of Tateishi with the teaching of Arahira.

Moreover, Arahira recognizes the differences between the two different types of organisms. On page 2, lines 42-46, Arahira states that that microorganisms for use on industrial materials are totally different from microorganisms causing disease on agricultural and horticultural crops or fungi. As such, one skilled in the art would not be motivated, if through nothing else than by this statement in Arahira, to combine the teachings of Arahira to the treatment of living materials since it is stated that such microorganisms are completely different. Therefore, one skilled in the art would not find the instant claims obvious in view of the combination of Tateishi and Arahira.

Withdrawal of the rejection is respectfully requested.

Claims 3-10 either directly or indirectly depend from either claim 1, 5, 7, or 10 and are patentable over the cited references for at least the same reasons as set forth above with respect to the claim from which they depend. Withdrawal of the rejection of these claims is respectfully submitted.

New claims 11-20 are believed to be patentable over the cited references. Allowance of these claims is respectfully requested.

In summary, it is respectfully submitted that the instant application, including Claims 1 and 3-20, is presently in condition for allowance. Notice to the effect is earnestly solicited. If there are any further issues in this application, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

By \_\_\_\_\_

Michael A. Miller  
Attorney for Applicants  
Reg. No. 50,732

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LANXESS Corporation  
Law & Intellectual Property Department  
111 RIDC Park West Drive  
Pittsburgh, Pennsylvania 15275-1112  
(412) 809-2232  
FACSIMILE PHONE NUMBER:  
(412) 809-1054